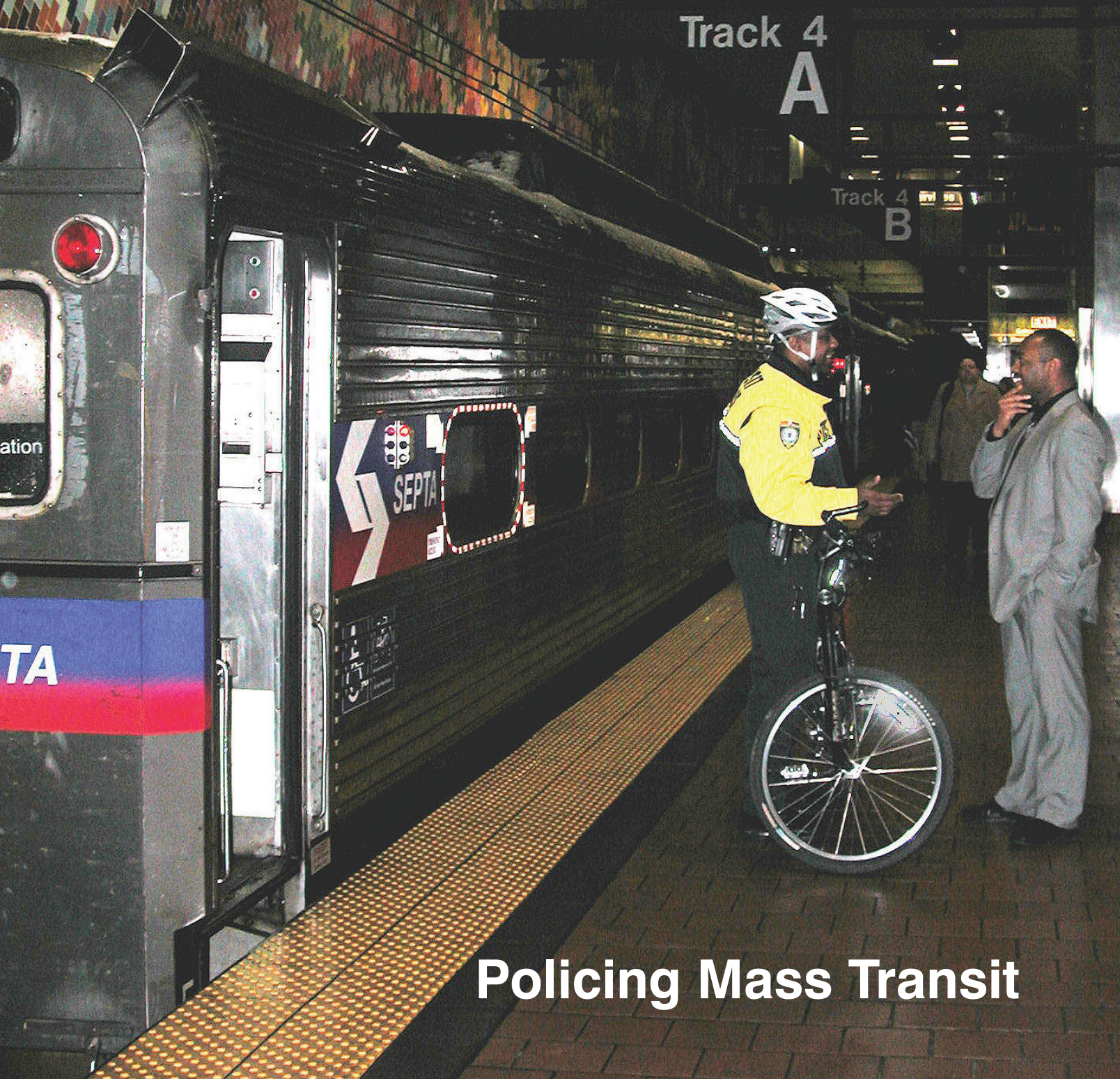


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July 2009

FBI Law Enforcement Bulletin



Policing Mass Transit



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Robert S. Mueller III
Director

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FBI Law Enforcement Bulletin

Features

The SEPTA System

By David Scott

1

Transit agencies should collaborate with local, state, and federal organizations to create a safe, secure environment and to protect critical infrastructure.

An Officer's Worst Nightmare

By Tom Hausner

14

A deputy's account of being taken hostage offers some valuable lessons for all law enforcement officers.

Search Incident to Lawful Arrest

By Richard G. Schott

22

A recent Supreme Court ruling impacts the search incident to arrest exception to the warrant requirement.

Departments

10 Crime Data

Law Enforcement Officers
Killed in 2008

19 Unusual Weapon

Obsidian Knife

11 ViCAP Alert

Sexual Assault and Homicide

20 Leadership Spotlight

Leaders Need to Recognize
Communication Styles

12 Notable Speech

Contemporary Components
of Community Policing

21 Bulletin Reports

Federal Justice Statistics
Policing Terrorism

Attention Readers

Please read an important announcement on page 32 about a new online initiative for the magazine.

Policing Regional Mass Transit

The SEPTA System

By DAVID SCOTT

Protecting critical infrastructure, particularly mass transit, in the United States has become even more essential since September 11, 2001. Most systems are located in heavily populated areas and support a crucial foundation to the economic viability of their regions. Today, about 6,500 public transportation providers operate in the United States and Canada, with the majority offering more than one mode of service. Approximately 1,500 agencies provide bus service, 80 offer rail, 5,960 furnish paratransit, and 150 operate other modes.¹ The Southeastern

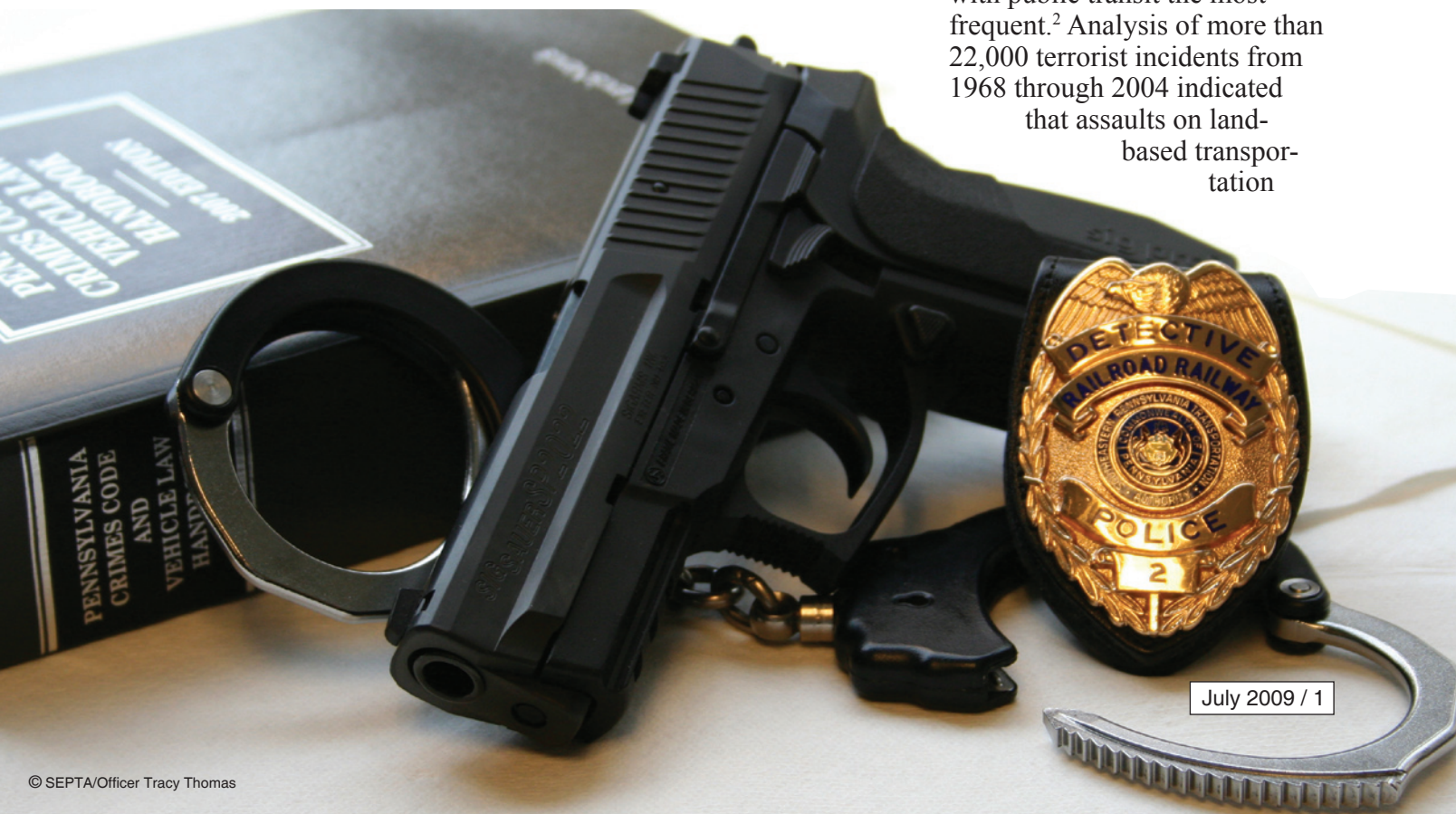
Pennsylvania Transportation Authority (SEPTA) Transit Police Department protects one of only two multimodal networks in the United States consisting of buses, subway lines, high-speed and regional rail, trackless trolley, and paratransit vehicles. SEPTA's entire service area extends 2,200 square miles throughout parts of Pennsylvania, New Jersey, and Delaware. It is the fifth largest police agency in Pennsylvania.

Because terrorists and common street criminals frequently target mass transportation, it is critical that all transit administrators establish working

relationships with local, state, and federal public safety agencies, as well as communities in their service areas. Departments within transit agencies (e.g., system safety, risk management, training, public and government affairs, information technology, control centers, and rail and surface operations) also should work together to create a safe, secure environment for citizens, employees, and public safety officials.

Terrorism Risks

Approximately one-third of terrorist attacks worldwide target transportation systems, with public transit the most frequent.² Analysis of more than 22,000 terrorist incidents from 1968 through 2004 indicated that assaults on land-based transportation



July 2009 / 1

targets, including mass transit, have the highest casualty rates of any type. On average, these offenses caused more than two and one-half times the casualties per incident as those involving aviation targets.

A recent study of terrorist attacks on rail found that bombings accounted for 80 percent, followed by sabotage (6 percent) and armed attack (6 percent).³ Explosives were the weapons used in 77 percent of such incidents, and 8 percent involved hoaxes or threats. The study cautioned that security measures must address the threat of explosive devices, and, while attacks from chemical and radiological weapons are unlikely, they warrant attention as well because of their potentially serious results.

Although major terrorist attacks like those on transit systems in other parts of the world have not occurred in the United States, chances prove exceedingly high. Heavily populated systems that operate on predictable schedules, with passengers having little or no chance to escape crowded stations, buses, trains, and other conveyances, make public transportation susceptible to acts of terrorism. Moreover, many systems are expanding and ridership has generally increased, raising more policing concerns. Vehicular gridlock, air pollution, expensive parking fees, and higher gasoline prices have made mass transit an attractive option for urban dwellers in the Philadelphia area. Numerous individuals have chosen

to leave their vehicles at home and, subsequently, have logged millions of more daily rides on SEPTA city transit and regional rail.⁴ Moreover, Americans used public transportation for 10.3 billion trips in 2007, the most in 50 years and a 2.1 percent increase over 2006.⁵

Strategies

Terrorists and criminals continue to think of new schemes and attempt to adjust their tactics to thwart law enforcement officials who, in turn, must remain relentless when developing and integrating strategies to safeguard the public. To successfully address the potential of terrorism and crime on Philadelphia, Pennsylvania's, regional transit system, the SEPTA Transit Police Department uses a combination of established, innovative strategies and programs. It implemented intelligence-led (ILP), community, and problem-oriented policing; local, state, and federal initiatives; new technologies; zone policing (decentralization); truancy intervention; Compstat; quality-of-life (minor crimes) enforcement; and passenger surveys. Following the events of September 11 and all subsequent U.S. Department of Homeland Security (DHS) directives for security awareness and emergency preparedness, officials from the SEPTA



Deputy Chief Scott serves with the Southeastern Pennsylvania Transportation Authority Transit Police Department in Philadelphia.

“

The SEPTA Transit Police Department participates in a number of initiatives with external agencies.

”

Transit Police Department and other transit personnel have worked closely with the region's emergency management organizations to ensure the appropriate inclusion of SEPTA.⁶

Using ILP to address terrorism and crime on mass transit can facilitate an effective coordinated regional response. Law enforcement authorities, including transit police, gather and disseminate data through proper channels and produce an intelligence end product to enhance decision making at both the tactical and strategic levels.⁷ The SEPTA Transit Police Department recently implemented an ILP program and hosted a 4-day, intelligence-training course funded by a grant from the Philadelphia Area Regional Transit Security Working Group-Joint Regional Information Exchange System (PARTSWG-JRIES).⁸ Non-transit agencies also attended this free training that addressed transportation attacks, identity theft as a foundation for terrorism, intelligence law matrix development and analysis, and link development and analysis. Members of PARTSWG-JRIES and other external law enforcement agencies use virtual-workspace computer software to share information. Additionally, the SEPTA transit police disseminates an intelligence bulletin to local law

enforcement departments that highlights mass transit incidents throughout the region.

Cooperation

The SEPTA Transit Police Department participates in a number of initiatives with external agencies. SEPTA officers are helping develop the

activity.^{9,10} Officers, agents, and intelligence analysts collect intelligence, analyze criminal trends and terrorist threats, and disseminate information.¹¹ The DVIC creates an immense opportunity for transit police to exchange intelligence with their peers on local, state, and federal levels. To further facilitate the



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Delaware Valley Intelligence Center (DVIC), a proposed regional fusion center for the Philadelphia area.⁹ This “collaborative effort of two or more agencies provides resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorist

collection of such vital information, the SEPTA Transit Police Department also assigns personnel to various federal and state task forces.

The U.S. Department of Transportation's Federal Transit Administration (FTA) requires states to oversee the safety and security of their mass transit agencies, and, in Pennsylvania,

Figure 1.

TA Security and Emergency Management Action Items

The tragic events of September 11 ushered in a new era for security and emergency preparedness in the United States. As a result, federal, state, and local governments and transit agencies continue to assess their capabilities to manage the risk environment. The following list addresses current security risks that confront transit agencies.

Management and accountability

- establish written system security programs and emergency management plans
- define roles and responsibilities for security and emergency management
- hold operations and maintenance supervisors, forepersons, and managers accountable for security issues under their control
- coordinate security and emergency management plans with local and regional agencies

Security and emergency response training

- establish and maintain a security and emergency training program

Homeland Security Advisory System (HSAS)

- establish plans and protocols to respond to the HSAS threat levels

Public awareness

- implement and reinforce a public security and emergency awareness program

Drills and exercises

- conduct tabletop and functional drills

Risk management and information sharing

- establish and use a risk-management process to assess and manage threats, vulnerabilities, and consequences (risk management includes mitigation measures selected after risk assessment has been completed)
- participate in an information-sharing process for threat and intelligence information
- establish and use a reporting process for suspicious activity (internal and external)

Facility security and access controls

- control access to security critical facilities with ID badges for all visitors, employees, and contractors
- perform physical security inspections

Background investigations

- conduct background investigations of employees and contractors

Document control

- control access to documents of security critical systems and facilities
- process handling and access to sensitive security information

Security audits

- audit program

Source: U.S. Department of Transportation, Federal Transit Administration.

the Department of Transportation (PennDot) governs those with rail modes. Accordingly, SEPTA established and implemented an oversight program to ensure maximum safety and security of its passengers, employees, and the public and to protect SEPTA property from loss or damage.¹² The FTA also mandated that U.S. public transportation agencies develop a system security and emergency preparedness plan (SSEPP). The SSEPP calls for the creation of a committee to address security issues on the system. To that end, SEPTA established the Joint Emergency Management Committee (JEMC) that consists of representatives from various internal (e.g., transit police, rail and bus operations, training, and maintenance) and external departments to facilitate communication among organizations that respond to transit emergencies. This creates another opportunity for federal, state, and local officials to become more familiar with SEPTA's system, conveyances, and infrastructure, as well as safety initiatives and emergency operations plans.

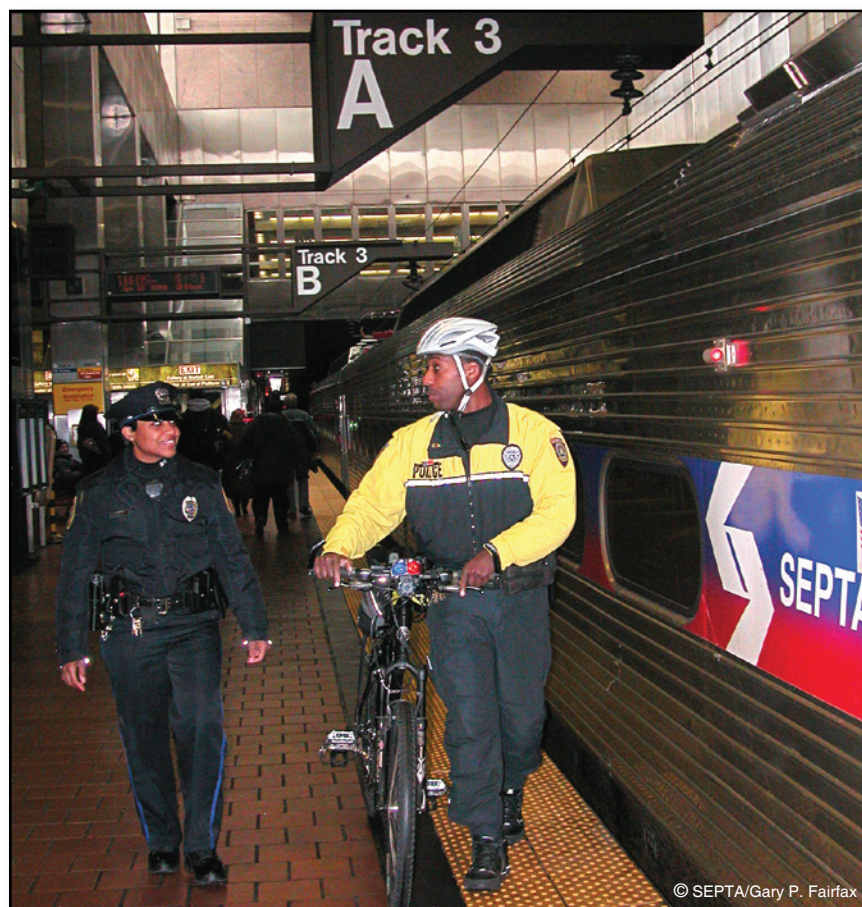
Recognizing the needs of such special jurisdictions as transit systems to identify and prepare for potential terrorism risks, DHS undertook extensive efforts to help agencies develop and execute preparedness

solutions.¹³ With direct support from DHS, SEPTA conducted a needs assessment to identify possible enhancements in security countermeasures and response capabilities and to develop a prioritization strategy for their implementation.

The SEPTA Transit Police Department also works closely with the DHS' Transportation Security Administration (TSA). Through the Baseline Assessment and Security Enhancement

(BASE) Program, TSA inspectors assess a transit system's security and emergency preparedness action items (Figure 1), particularly emphasizing several core fundamentals.¹⁴

TSA also trains and certifies explosives detection canine teams to provide a mobile flexible deterrence and detection capability to passenger transit systems. Since late 2005, TSA has deployed these teams using a risk-based application of



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resources,¹⁵ which enabled the SEPTA Transit Police Department to augment their existing canine unit by partnering TSA canines with SEPTA officers. Further, TSA Visible Inter-modal Prevention and Response teams¹⁶ and TSA rail inspectors provide visibility on the Philadelphia transit system during heightened times of alert.¹⁷

Training

It is critical that all transit personnel receive training in emergency management procedures, the incident command system (ICS), and the National Information Management System (NIMS). Capabilities for SEPTA's response to major crimes, accidents, terrorism, and natural disasters are organized

according to the ICS specified in the system's SSEPP and emergency operations plan. This plan enables SEPTA to integrate with NIMS or the ICS established by public safety and emergency management agencies and to comply with regional protocols.

All SEPTA police officers must complete annual recertification training by Pennsylvania's Municipal Police Officers Education Training Commission. During that time, the SEPTA Police Training Unit provides additional instructions, and officers meet the command staff to discuss issues that concern them. The National Transportation Institute (NTI) and the FTA provide aids to facilitate in-service training and annual recertification for many transit employees. In addition, many transit police supervisors and officers attend DHS training or complete courses through the FBI National Academy and other programs.¹⁸

Technology

The SEPTA Transit Police Department uses a radio interoperability system (RIOS) with voice-over Internet protocol (VoIP) to connect dissimilar communications systems (e.g., radio, landline and satellite telephones, computers) into "talk groups." Because SEPTA's service area encompasses nearly

every county in the region, it was important for transit police to lead the efforts in facilitating interoperability with as many public safety departments as possible. Currently, over 250 agencies have access to SEPTA's RIOS system, which they can use during pursuits or a major incident when multiple jurisdictions respond to more than one scene. To enable outside agencies responding to transit emergencies to communicate underground by radio in the immediate area, the SEPTA Transit Police Department developed a portable underground radio repeater system (PURRS) that also can interface with RIOS, creating more interoperability. Further, transit police officers must be able to link computer-aided dispatch (CAD) systems with other agencies to coordinate emergency response throughout their regions. Therefore, SEPTA purchased a CAD that can interface directly with the Philadelphia Police Department and local university police agencies.

Smart Stations, an \$89 million project on the subway line, will interface closed-circuit television (CCTV) cameras, intrusion detection systems, and other security and life safety (e.g., fire suppression) procedures over a new fiber-optic network. Many trains and buses also will have new CCTV

cameras and global positioning systems. SEPTA is testing several new technologies at various locations to determine their appropriateness in a mass transit environment, and transit police officials provide input regarding acquisition of new security methods.

“Transit police agencies can successfully use the Compstat process to facilitate policing their unique environments.”

Decentralization

Since the SEPTA Transit Police Department decentralized in 1990, commanders, supervisors, and officers have been assigned to specific geographic zones. Personnel are empowered to make decisions from the bottom up and develop strategies that address unique problems in their patrol areas. Various sections of the city and subway and regional rail lines are divided into eight distinct zones, consisting of mass transit stations and installations. Each zone has a headquarters location

where officers report both on and off duty. This approach enables them to become familiar with the territory, passengers, and criminals in their zones, making it easier to gather criminal intelligence or report suspicious information relating to terrorism.

Crime Prevention

SEPTA has taken several steps to address crime reduction on its mass transit system. As early as 1981, SEPTA developed a nationally recognized quality-of-life enforcement program, including an antigraffiti program to increase ridership by providing a clean, safe system. Even today, the Philadelphia region's transit system remains relatively free of graffiti.

In 1987, SEPTA transit officers began issuing nontraffic summary citations and code violation tickets to those who commit such minor crimes as graffiti, fare evasion, smoking, littering, and disorderly conduct. This practice has helped maintain a low level of felonies on the system for almost 20 years. Issuing tickets no longer requires that officers spend valuable patrol time in districts processing violators; most are released at the scene within minutes. And, offenders often express surprise when plainclothes officers approach them on the system for minor crimes.

Some adults and juveniles arrested for minor offenses on the transit system have their cases adjudicated in Philadelphia Community Court, an innovative, problem-solving judiciary that combines criminal justice and social service agencies for a comprehensive response to quality-of-life crimes. Community service sentences and behavioral treatment programs, rather than incarceration, are emphasized for low-level offenses and help decrease recidivism by addressing defendants' underlying social or medical service needs. Consequences focus on restitution to the community by requiring that offenders perform services in the neighborhoods where they committed the crimes.¹⁹

A community youth coalition established a unique program with the court and the SEPTA Transit Police Department.²⁰ Juveniles charged with minor offenses on the transit system serve up to 30 hours community service by helping develop a community newsletter. This approach gives these young offenders an opportunity to enhance their writing skills and learn aspects of journalism.

Often, truant children commit crimes or become victims of one. To lower the juvenile crime rate on the Philadelphia transit system, SEPTA participates in the Truancy Intervention Program. Students apprehended on the system or in the surrounding communities are taken to a SEPTA bus at the nearest

subway station and transported to a truancy center (a designated school). At least 39,000 truants have been picked up since the program's inception in 1998.

The SEPTA Transit Police Department and other local agencies also are part of a unique strategy that facilitates communication between juveniles and officers. In 1990, the Juvenile Justice and Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency established the Disproportionate Minority Contact (DMC) Subcommittee to assess the overrepresentation of minority youth in the state's juvenile justice system. The DMC also seeks to develop and implement strategies to reduce the disproportionately high contact of minority youth with the state's juvenile justice system. With the support of the Pennsylvania Commission on Crime and Delinquency, youth and law enforcement meet to have open, honest discussions about the differences in the perspectives, personalities, attitudes, and cultures of each group and to address respect and profiling issues.²¹ The subcommittee plans to develop a police academy curriculum that will facilitate this process.

When not patrolling, officers in SEPTA's Community Affairs Unit offer presentations



© SEPTA/Officer Tracy Thomas

for schools, churches, and other civic organizations. They also host such annual events as National Night Out at transit stations or seasonal festivals at a homeless shelter.

Compstat

Transit police agencies can successfully use the Compstat process to facilitate policing their unique environments.²² Statistics and computerized crime maps of the transit system and surrounding neighborhoods can provide a snapshot of crime patterns. The SEPTA Transit Police Department conducts Compstat meetings and follows several basic principles: communication of accurate, timely intelligence; coordination of focused rapid deployment; implementation of effective tactics; and relentless follow up. SEPTA representatives also attend Philadelphia's Phillystat meetings, which facilitate coordination and communication among public safety and other agencies.

Conclusion

Ensuring the security of this country's critical infrastructure has become even more of a priority since September 11, 2001. To that end, public transportation systems must continuously develop and implement programs to protect passengers, employees, and property from those individuals who wish to

do harm. The Southeastern Pennsylvania Transportation Authority Transit Police Department's strategies to address both crime and terrorism have improved not only the safety of riders but of the general public in the city of Philadelphia and surrounding counties as well. Cooperation and collaboration among federal, local, and state organizations facilitate information sharing and ensure that safety initiatives and emergency operation plans provide the best possible response capabilities. ♦

**“
Departments within
transit agencies...
should work
together to create
a safe, secure
environment....
”**

Endnotes

¹ American Public Transportation Association, "Public Transportation Fact Book," 58th edition, May 2007, viii.

² Information in this paragraph is derived from the Congressional Research Service, "Transit Security," Memo to Homeland Security Committee Democratic Staff, August 28, 2003.

³ Information in this paragraph is derived from "RAND Study Provides Framework for Passenger-Rail Systems to Cost-Effectively Protect Riders from

Terrorist Attacks"; <http://www.rand.org/news/press/2007/12/11/>.

⁴ Dan Geringer, "SEPTA's \$1.1 B Budget Adds Service to Accommodate Soaring Ridership"; available from <http://www.philly.com>.

⁵ http://www.apta.com/media/releases/080310_ridership.cfm

⁶ SEPTA System Security and Emergency Preparedness Plan, 85 and 86.

⁷ J. Ratcliffe, "Intelligence-Led Policing"; available from <http://www.aic.gov.au/publications/tandi/ti248.pdf>.

⁸ The SEPTA Transit Police Department and other transit agencies in the region belong to this group, which was created to develop and implement a regional transit security strategy.

⁹ Bart Johnson, "A Look at Fusion Centers: Working Together to Protect America," *FBI Law Enforcement Bulletin*, December 2007, 28-32.

¹⁰ U.S. Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Assistance, in collaboration with DOJ's Global Justice Information Sharing Initiative and the U.S. Department of Homeland Security, "Fusion Center Guidelines: Law Enforcement Intelligence, Public Safety, and the Private Sector"; available from <http://www.iir.com/global/guidelines.htm>.

¹¹ Johnson.

¹² SEPTA System Security and Emergency Preparedness Plan.

¹³ SEPTA System Security and Emergency Preparedness Plan. In 2003, several grant programs and functions from other DHS components were consolidated with the Office of Domestic Preparedness under a new DHS agency, the Office of State and Local Government Coordination and Preparedness (SLGCP). In 2005, SLGCP was incorporated under the Preparedness Directorate as the Office of Grants and Training (G&T).

¹⁴ Transportation Security Administration, "Advancing the Security Baseline, Mass Transit"; available from http://www.tsa.gov/what_we_do/tsnm/mass_transit/sec_baseline.shtm.

¹⁵ "Oversight Hearing on the Transportation Security Administration (TSA)—Examining TSA's Efforts and Progress on H.R. 1, 'Implementing Recommendations of the 9/11 Commission Act of 2007,' Testimony of Kip Hawley, Assistant Secretary, TSA, before the U.S. Senate Committee on Commerce, Science and Transportation"; available from http://www.tsa.gov/assets/pdf/10-16-07_Testimony_SCST.pdf.

¹⁶ For more information, see http://www.tsa.gov/press/happenings/vipr_block-island.shtm.

¹⁷ Law enforcement administrators should be aware that such special programs may require dedicated funding,

personnel, time, and resources. Federal representatives must have a clear understanding of the impact their recommendations and mandates have on transit police and emergency management operations. Police administrators also must know how to integrate portions of federal programs with their strategies to devise a unique formula that addresses both crime and terrorism in their mass transit environments.

¹⁸ The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects.

¹⁹ The Philadelphia Courts First Judicial District, Philadelphia Community Court;

http://www.centercityphila.org/programs/community_court.aspx.

²⁰ For more information, see <http://www.nccy.org>.

²¹ Pennsylvania Commission on Crime and Delinquency; available from <http://www.pccd.state.pa.us/pccd/cwp/view.asp?A=1430&Q=575130>.

²² For additional information on Compstat, see Jon M. Shane, "Compstat Process," *FBI Law Enforcement Bulletin*, April 2004, 12-21; "Compstat Design," *FBI Law Enforcement Bulletin*, May 2004, 12-19; and "Compstat Implementation," *FBI Law Enforcement Bulletin*, June 2004, 13-21.

Crime Data

Law Enforcement Officers Killed in 2008

Preliminary statistics for 2008 indicate that 41 law enforcement officers were feloniously killed in the line of duty, 17 fewer than in 2007. By region, the South lost 20 officers; the Midwest, 9; the West, 9; and the Northeast, 3.

Of these felonious deaths, 10 occurred during arrest situations, 8 in traffic pursuits and stops, 7 during tactical situations, 6 while investigating suspicious persons and circumstances, 6 in ambush situations, 2 during investigative activities, 1 while responding to a disturbance call, and 1 while handling a prisoner.

Firearms were used in 35 of the slayings: handguns in 25, rifles in 5, shotguns in 4, and an unknown type of firearm in 1. Four officers were killed by vehicles, and two died from injuries as a result of a bomb.

At the time of their deaths, 30 of the 41 law enforcement officers were wearing body armor. Ten officers fired their weapons, and four attempted to do so. Six officers had their weapons stolen, and four were killed with their own weapons. The 41 law enforcement officers were killed in 38 separate incidents, and all have been cleared by arrest or exceptional means.

In 2008, the number of officers killed in accidents also dropped from the previous year. Sixty-seven officers were accidentally killed in 67 separate incidents while performing their duties. This represents 16 fewer officers killed in accidents than in 2007.

The FBI will release final statistics in the Uniform Crime Reporting Program's annual report, *Law Enforcement Officers Killed and Assaulted*. This document will appear in the fall of 2009 on the FBI's Web site, <http://www.fbi.gov>.



Sexual Assault and Homicide



On Wednesday, August 23, 2000, at approximately 9:50 p.m., an 18-year-old, white male was walking to a bus stop when an unidentified white male accosted him at gunpoint. The offender forced the victim to the offender's pickup truck parked nearby. At the truck, the victim was gagged, and his hands were bound behind his back. The offender drove the victim to unknown locations and sexually assaulted him. As the offender was leaving, he told the victim not to get up until he left and not to report this incident to the police. During the victim's physical examination, the offender's DNA was recovered. The DNA has been profiled and is maintained in the National Combined DNA Index System (CODIS).

On Sunday, September 24, 2000, at around 10 p.m., Dalmar Hussen, an 18-year-old Somalian male, was walking home from a friend's house. On Monday, September 25, 2000, at roughly 9 a.m., Hussen was found dead, lying facedown on the ground in a vacant lot near his home. There were signs of a struggle, and Hussen had been shot. A blue, baseball-type cap with a "Hennessy Martini" logo on the front of it was found on the ground nearby. DNA extracted from the hat linked the offender of this case to the above sexual-assault case. Currently, the offender in these two cases remains unidentified.

Offender's Description

Sex: Male
Race: White
Age: 20s (approximately)
Height: 5'9" to 6'
Weight: 180 pounds
Hair: Blond, short
Clothing: Blue, baseball-type cap emblazoned with the "Hennessy Martini" logo
Weapon: Firearm
Vehicle: A white, late 1990s model pickup truck with a black-and-white Phoenix, Arizona (PHX), Euro-style oval decal in the rear window

Law enforcement agencies with similar cases or a witness who can assist in identifying the perpetrator of these two violent crimes should contact Detective Donald Newcomer, Phoenix, Arizona, Police Department, at 602-495-5264 or e-mail addresses don.newcomer@phoenix.gov or donald.newcomer@leo.gov; or Crime Analyst Glen W. Wildey, Jr., of the FBI's Violent Criminal Apprehension Program (ViCAP) Unit at 703-632-4166 or gwildeyj@leo.gov. ♦

Notable Speech

Contemporary Components of Community Policing

By Michael F. Masterson

Good morning. Welcome, and thank you for choosing Boise as your Crime Prevention Conference site. Contemporary community policing involves three important components: reactive, coactive, and proactive. The reactive response is highly visible and evident to our public—the uniformed officer on patrol; the plainclothes detective conducting case follow-up investigation; and the community service specialist taking cold crime reports, recovering found bikes, and photographing and processing evidence. The coactive component is symbolized in Neighborhood Watch programs, educational partnerships with schools and community groups, or working with businesses to lessen workplace violence, vandalism, thefts, and robberies. A Crime Stoppers program is another example of a citizen-led board of directors working in unison with law enforcement to solve crime throughout the Treasure Valley area. The proactive components are limited in nature to conducting a home or business security survey, educating students on Internet dangers, or instructing young people on protective dating behaviors. Our traditional hi-touch outreach efforts now must be coupled with hi-tech measures as well.

One exciting example I have to share with you today is a collaborative project with a locally based (and one of our nation's fastest growing) technology firms to transition Neighborhood Watch from telephone-tree notifications to geo-based interactive information sharing. Residents of specific neighborhoods will be able to click on a link for their neighborhood map to see where a crime has occurred with limited details or a message from the investigating officer or assigned detective asking for information to solve the crime. A second

click on the crime incident location will provide an immediate e-mail response to the investigator or crime prevention specialist or allow the citizen to send an anonymous text message or tip to our crime solvers program.

I am equally proud of my department's submission for an award based on our organized retail crime interdiction project that combines all three components (reactive, coactive, and proactive) of community policing. The Crime Prevention Unit supervisor, a civilian, has connected our large retail stores and business community by e-mail addresses where photos of individuals suspected of criminal behavior are shared with dozens of loss prevention agents and law enforcement officers. Additionally, business owners can directly contact interdiction team police staff via cell phone, and monthly meetings are held with loss prevention and law enforcement staff to share information and address problems. This endeavor has proven a powerful tool in thwarting organized retail theft

Chief Masterson heads the Boise, Idaho, Police Department. He delivered this speech to graduates of the Idaho Peace Officer Standards and Training Academy.



groups from stealing large amounts of merchandise. Other jurisdictions, local and national, have requested training on the methods we use to make this program a success.

Finally, the workshops offered through your conference are timely and forward thinking in helping us create a preferred future for crime prevention. We need to equally balance our presence in virtual space with physical space. The people we serve are meeting more frequently in virtual space for everything from seeking a date, buying a coat, and paying their bills to applying for a checking or savings account. At the same time, crime prevention specialists must meet in person to forge relationships, exchange new ideas and best practices,

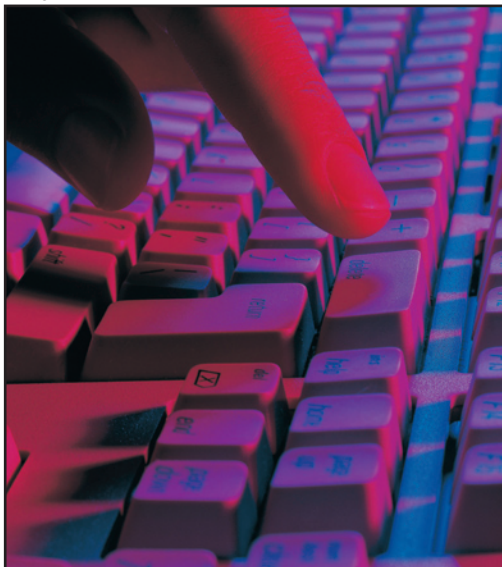
and discuss ways we can become more effective in the two most underutilized but most promising components of our work: proactive and coactive policing.

Unfortunately, many police agencies today devote only a small amount of their resources to crime prevention education and partnerships. And, I am as guilty as most of my colleagues in understanding the importance and potential of crime prevention initiatives. But, you continue to give us our greatest rate of return on the small investment we make in your work.

Best wishes for a productive conference. Enjoy your stay in one of our country's safest and most livable communities. ♦

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Also, the *Bulletin* is available for viewing or downloading on a number of computer services, as well as the FBI's home page. The home page address is <http://www.fbi.gov>.

An Officer's Worst Nightmare

Lessons Learned from Being Taken Hostage

By TOM HAUSNER



On patrol at night, you are in your own world. Your shift started a couple of hours earlier, and it is midweek. You begin thinking that it may be a slow night. Suddenly, your radio crackles with the sound of an officer screaming for assistance. It will get worse before it gets better. The calm night you thought you were going to have is gone, and an officer's worst nightmare has begun. Based on reports, radio

traffic, firsthand information, and subsequent investigative evidence, this narrative details a true account of one deputy's experience of being taken hostage.

The Call for Service

The deputy responded to a call concerning a domestic dispute in a rural area. The caller had advised, "There's a guy outside beating up his wife or girlfriend." A commonplace occurrence for American law

enforcement officers in rural jurisdictions, backup—while not close—was responding as quickly as possible.

Nothing appeared out of the ordinary at the location, a large two-story home being used as a multiunit inexpensive rooming house. Many of the residents had prior contacts with the sheriff's department, and deputies were familiar with the dwelling.

The deputy parked midway up the driveway, walked

toward the house, and saw several people go inside. Two males appeared out of the darkness from the garage area, and a minivan with fresh damage was parked nearby. Subsequent investigation would reveal that as the female involved in the dispute (the suspect's wife) tried to leave, she had backed into a tree.

The deputy continued walking up the driveway and made contact with the male who was the reason for the 911 call. The deputy requested identification. The suspect, known as Billy, was 26 years old, 5'9" tall, and weighed 175 pounds, with a muscular build. He was polite, calm, and cooperative, displaying no signs of resistance. The deputy asked about some scratch marks on his neck. Billy replied that they were from the accident and that there was no problem. The conversation lasted less than 2 minutes. Then, the deputy saw the handle of a knife with the blade stuck under Billy's watchband.

Standing approximately 2 to 3 feet from Billy, the deputy asked him for the knife. In response, Billy drew it and slashed the deputy's face. Then, he knocked the deputy to the ground and took the service weapon. At the same time, the deputy screamed into the portable radio for assistance and turned away, attempting to

protect the firearm. Billy shoved the gun into the back of the deputy's neck saying, "I can paralyze you." Billy's wife yelled at him to stop, but the deputy had now become a hostage.

The Nightmare Begins

The hostage's radio scream had officers from every jurisdiction within miles responding to assist. The first backup officer pulled into the driveway and exited the vehicle with weapon drawn. Billy used the hostage as a shield as he turned and fired his first shot at that officer who then radioed, "Shots fired." Billy's wife ran to the backup officer, grabbing him and screaming not to hurt her husband. The officer managed to calm her and placed her in the patrol unit for safety reasons.

The second arriving officer was the focus of the second shot. At this point, the hostage began counting rounds fired and talking to Billy in an attempt to calm him. While continuing to yell at the responding officers, Billy pulled the hostage down one side of the house.

The second backup officer moved down the other side of the residence. As Billy and the hostage came into view, the officer saw that the hostage had slipped down near Billy's waistline. Billy still had the revolver pointed at the hostage's head. The officer aimed and fired at Billy's head but missed. Billy spun around and shouted, "Who...is shooting at me?" Billy pulled the hostage into the residence, occupied by about a dozen people who ranged from

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Would you have the presence of mind to start giving tactical information seconds after you escaped from the most horrifying event of your life?

”



Sergeant Hausner is the SWAT commander for the Walworth County, Wisconsin, Sheriff's Department.

infants to a man in a wheelchair. Then, the third shot was fired. Additional officers arrived and set up a perimeter around the house.

Billy demanded the hostage's duty belt and protective vest, but the hostage started talking to him in an attempt to calm him and divert his attention. Billy tried to get the belt off but failed. The hostage began removing and throwing items from the duty belt to keep Billy from using them. The fourth shot was fired. After they moved to a second-floor window on the driveway side, the fifth shot was fired, right beside the hostage's ear. Those inside the house continued to yell at Billy who became more agitated and scared.

Billy began telling the hostage about his children, saying that he was a good father and loved his kids, but that all cops were bad and would hurt or kill him. The hostage told him about a 12-year-old daughter and how important it was to be a proud parent. (In truth, the hostage had no children.) Billy turned his attention back to the duty belt, but nothing of value remained, except handcuffs. He tried to get them, saying, "Cuff me and shoot me."¹ The hostage continued to speak calmly to him.

Officers then heard the sixth shot but were not certain of the total number of rounds fired or those, if any, that remained. The hostage had thrown one of two speed loaders out the second-floor window, and the other had

fallen out on the first floor. Billy attempted to use the hostage's portable radio, but to no avail.

Pushing and shoving the hostage down the stairs, Billy tried to get the vest off, yelling, "Rip your shirt off like your life depends on it." The hostage unbuttoned only two buttons before trying to calm Billy again.

Under the direction of a second-shift SWAT sergeant, responding officers formed a reaction team with officers from three different departments and set up near the garage. One reaction team member began to negotiate with Billy who was screaming from the first floor near the door.

Finally, Billy exited the door, holding the gun to the head of the hostage, not allowing a clear shot due to the positioning of the hostage in front of him. When Billy loosened his grip and lowered the firearm slightly as he reached for a cigarette, the hostage broke free and fled. Billy yelled and scrambled back inside the house. The hostage was free, but the incident was not over.

The Nightmare Ends

The SWAT commander and the SWAT K-9 deputy arrived at the scene within seconds of the hostage breaking free. To the commander's surprise, a tap on the shoulder turned out to be the hostage who immediately



Duty belt worn by deputy



(A) Reaction/negotiation team position

(B) Approximate location of deputy's patrol unit



(A) Billy and hostage came into view

(B) Position of officer who fired at Billy

told him that Billy was out of rounds, the pepper spray was somewhere downstairs, and an unknown number of people remained in the house.

Negotiations with Billy continued. A SWAT rifle team and additional SWAT members were briefed and deployed. Finally, Billy announced, "I'm coming out; don't shoot me." He exited the residence with both hands in the air, holding the pistol in his right hand while asking the officers to shoot him but then dropped the weapon. Officers took Billy into custody. SWAT members entered the residence and secured the scene.²

The Instructive Consequences

A review of this incident revealed some negative and

positive elements. The author presents both as a way to help other law enforcement officers who may face such a situation in the future and not as an attempt to establish blame or responsibility.

One officer responding from a nearby department lost control and crashed the patrol vehicle. Injured but not willing to quit, the officer flagged down another unit and went to the scene. In such cases, "if you don't get to the call, you don't do anyone any good" can represent an adage worth remembering.

Due to different radio frequencies among officers from the various jurisdictions, communication issues arose. The officers, however, did not let this affect the operation.

They communicated via a "human projection modulator": they yelled at each other.

A perimeter officer armed with a .223-caliber rifle saw Billy in a window and later said, "I had a clear shot but did not see him with a weapon." Such dilemmas for officers faced with using deadly force occur in many situations. However, thorough knowledge and understanding of legal issues and departmental policies can reduce these concerns.³

The deputy taken hostage thought Billy was not a threat because he was polite and cooperative. But, politeness and cooperation do not always mean compliance. In addition, once the knife came into view, the deputy continued to think that

Billy would comply with the request to surrender it. Completely aware of these misperceptions and the first to admit them, the deputy later commented, “I was stupid and screwed up.”²⁴

In contrast and equally important, what took place *after* being taken hostage speaks volumes for the deputy’s tactical and survival mind-set. Would you have thought to throw away extra ammunition from your duty belt? Would you shout out to fellow officers on the perimeter how many rounds the person shoving a gun into your ear has fired? Would you think to lower your center of gravity to give other officers a possible shot at someone threatening to

kill you? Would you be able to talk to the assailant and turn his attention away from removing your protective vest and killing you? Would you have the presence of mind to start giving tactical information seconds after you escaped from the most horrifying event of your life? These positive actions undoubtedly contributed greatly to the deputy’s survival.

Solid negotiation skills also played a major role in the successful outcome of the incident. Are you prepared to negotiate for your own life? You will not have time to wish you had some type of negotiation training if you ever are taken hostage. Deflection pulled the anger

away when Billy tried to remove the deputy’s protective vest. Changing the subject, asking questions, and redirecting what was happening also proved beneficial. In addition, the officer on the perimeter negotiating with Billy had no formal negotiator training but functioned incredibly well under extreme circumstances. Although coached, he did much of the negotiation on his own. Should all patrol officers be trained in basic negotiation skills? Some law enforcement agencies, especially those in rural areas where trained negotiators can be miles away, may want to consider such options. After all, “One hundred



(A) Approximate site of unit taking fire upon arrival



(A) Speed loader thrown out this window

(B) Door used to enter and exit

victories in one hundred battles is not the most skillful. Subduing the other's military without battle is the most skillful."⁵

Conclusion

To protect and serve are the watchwords of the law enforcement profession. Officers are sworn to protect innocent lives and serve the members of their communities. But, how many officers know how to protect themselves? The deputy in this case made some mistakes but also some excellent decisions once taken hostage that contributed greatly to the positive outcome of the situation. Other officers must learn from such incidents because as Sun Tzu said, "Knowing the other and

knowing oneself, in one hundred battles no danger. Not knowing the other and knowing oneself, one victory for one loss. Not knowing the other and not knowing oneself, in every battle certain defeat."⁶ ♦

Endnotes

¹ For additional information on the phenomenon of suicide by cop, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Suicide by Cop: Defining a Devastating Dilemma," *FBI Law Enforcement Bulletin*, February 2005, 8-20.

² The perpetrator was tried, convicted, and sentenced to 12 years in prison. The deputy taken hostage and all involved officers were debriefed and received postincident counseling to combat the psychological effects of this traumatic incident in accordance with departmental policies.

³ For additional information on the use of deadly force, see Shannon Bohrer,

Harry A. Kern, and Edward F. Davis, "The Deadly Dilemma: Shoot or Don't Shoot?" *FBI Law Enforcement Bulletin*, March 2008, 7-12; and Charles Joyner and Chad Basile, "The Dynamic Resistance Response Model: A Modern Approach to the Use of Force," *FBI Law Enforcement Bulletin*, September 2007, 15-20.

⁴ For an overview of officer and offender perceptions, see Anthony J. Pinizzotto and Edward F. Davis, "Offenders' Perceptual Shorthand: What Messages Are Law Enforcement Officers Sending to Offenders?" *FBI Law Enforcement Bulletin*, June 1999, 1-4; and Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Officers' Perceptual Shorthand: What Messages Are Offenders Sending to Law Enforcement Officers?" *FBI Law Enforcement Bulletin*, July 2000, 1-6.

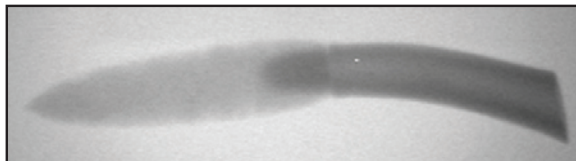
⁵ Sun Tzu, *The Art of War: A New Translation by the Denma Translation Group* (Boston, MA: Shambhala Publications, Inc., 2001).

⁶ Ibid.

Unusual Weapon

Obsidian Knife

This custom-made knife contains no metal, making it invisible to magnetometers. It has an obsidian blade with a bone handle. Law enforcement officers should be aware that offenders may attempt to use this type of unusual weapon.



Leadership Spotlight

Leaders Need to Recognize Communication Styles

While recently instructing Marine Corps Special Operations Forces at Camp Lejeune, North Carolina, I administered a communication-preference-identifying instrument known as the DISC to 55 officers and enlisted personnel. This assessment device helps individuals identify how they prefer to give and receive information—how to communicate. People primarily will fall into one of four categories. A number of widely recognized terms for each of the categories exist, but, in essence, an individual can be described as either direct and task oriented (Director), direct and people oriented (Socializer), indirect and people oriented (Relator), or indirect and task oriented (Thinker). Not surprisingly, there are a myriad of different blends and extremes in all four preferences, but, as a general rule, individuals will exhibit one more predominately than the others when they communicate.

During a problem-solving exercise, I divided the Marines into four groups according to their assessed communication preferences. I then gave them a crisis situation to handle (such as a terrorist attack with many civilian casualties) with instructions to describe how they as a group would respond. Each of the four groups developed a common theme of safeguarding lives, but each added a different emphasis based on their communication-style preference.

The Directors quickly set short-term goals and objectives for taking charge and securing the situation. The Socializers focused on how to prevent future terrorist events and loss of life and personal property. The Relators focused on calming the public's fear, concerns, and panic. The Thinkers began the detailed

logistical planning for evacuation, control points, crowd control, and a myriad of other command-and-control issues.

Witnessing the exercise was the colonel in charge of the school. As each group described their planned actions, the colonel quickly recognized and added to the discussion that each had a unique and valuable focus that would have been missed if the communication style was not represented. The colonel added that this exercise accurately demonstrates the adage "If we are all thinking alike, no one is thinking."

Later that day, the colonel summed up what he had witnessed. As a reminder, he said that as leaders, we need to know ourselves through tools like the DISC. We then need to know our people and how they prefer to give and receive information so that we can adapt our style to them. The content of our message is only as good as an individual's ability to receive it. If we as leaders are giving the message in a style different from those receiving it, they may not hear or comprehend it at all.

In whatever leadership role we assume in life, whether it is as a spouse, parent, law enforcement professional, or friend and colleague, it is imperative that we realize that not all people communicate information the same way. It is incumbent on leaders to identify their own style and then adapt it as needed for those they intend to lead. Our ability to lead is ultimately only as effective as our ability to communicate our vision. ♦

Special Agent Robin K. Dreeke, an instructor at the Counterintelligence Training Center and an adjunct faculty member of the Leadership Development Institute, prepared this Leadership Spotlight.

Federal Justice Statistics, 2005

Produced by the Bureau of Justice Statistics, *Federal Justice Statistics, 2005* contains information on suspects and defendants processed in the federal criminal justice system. The report provides data on the number of persons arrested, investigated, convicted, and sentenced for a violation of federal law, along with the number of offenders under federal correctional supervision at the pretrial and postconviction stages. In addition, the bulletin describes case outcomes, including percent prosecuted, convicted, and sentenced by type of sanction.

Federal law enforcement, courts, and corrections agencies contributed the data as a part of the Bureau of Justice Statistics Federal Justice Statistics Program. Specifically, material witness, immigration, and weapons were the fastest growing arrest offenses during the period between 1995 and 2005. Also, in 2005, immigration (27 percent) was the most prevalent arrest offense followed by drug (24 percent) and supervision violations (17 percent). Additional information about the report (NCJ 220383) is available at the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>.

Policing Terrorism: An Executive's Guide

Designed by the U.S. Department of Justice's Office of Community Oriented Policing Services, this manual can help police leaders, sheriffs, and other senior executives meet the challenges involved in countering the threat of terrorism. Offering 50 briefs that focus on terrorism prevention and preparedness, *Policing Terrorism: An Executive's Guide* provides information on the essential components of a counterterrorism plan, such as developing intelligence on terrorist threats, identifying and protecting major targets, and expanding disaster-response capabilities. The document can prove particularly relevant for law enforcement agencies that may have limited resources to devote to terrorism prevention and response. Readers can access the National Criminal Justice Reference Service's Web site, <http://www.ncjrs.gov>, for additional information concerning the guide (NCJ 224516).

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Hall of Honor, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)



The Supreme Court Reexamines Search Incident to Lawful Arrest

by RICHARD G. SCHOTT, J.D.

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The authority of law enforcement officers to conduct a warrantless search after making a lawful, custodial arrest has been recognized by the U.S. Supreme Court for 95 years.¹ The recognition of the need to conduct searches incident to arrest predates even the Court's acknowledgment of it. In its 1914 *Weeks v. United States* decision, the Supreme Court pointed out that the case before it was “not an assertion of the right on the part of the government *always*

recognized under English and American law, to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime.”² In spite of this long history, the search incident to lawful arrest exception to the Fourth Amendment warrant requirement,³ and the scope of the search thereby authorized, often has been debated in court opinions and law enforcement circles. After having what was considered a bright-line rule for almost 30 years regarding

the ability to search the passenger compartment of a vehicle incident to the arrest of a driver, passenger, or recent occupant of that vehicle, the Supreme Court decided on April 21, 2009, that this search is not subject to such a bright-line rule after all.⁴ The recent opinion must change the way law enforcement officers view their authority to conduct warrantless searches of vehicles following the arrest of a vehicle's driver, passenger, or recent occupant. As reported in the media the day after the opinion

was rendered, “[t]he Supreme Court yesterday sharply limited the power of police to search a suspect’s car after making an arrest, acknowledging that the decision changes a rule that law enforcement has relied on for nearly 30 years.”⁵

This article recounts the evolution of the search incident to arrest exception to the warrant requirement; discusses how the bright-line rule for searching vehicles following arrests developed; and analyzes how the recent *Arizona v. Gant*⁶ case has changed the legal landscape in this context.

From Weeks to Chimel: The Warrantless Search Incident to Arrest

While recognizing the right to conduct postarrest warrantless searches as far back as 1914, the Supreme Court’s treatment of this search authority has varied over time. In *Marron v. United States*,⁷ federal agents had secured a search warrant authorizing the seizure of liquor and certain articles used in its manufacture. When the agents arrived at the search location, they observed that the location was used not only for the manufacture of liquor but also for “retailing and drinking intoxicating liquors.”⁸ They then arrested the person in charge of the establishment and executed the search warrant.

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Special Agent Schott is a legal instructor at the FBI Academy.

While searching a closet for the items listed in the warrant, they found and seized an incriminating ledger. The ledger admittedly was not covered by the search warrant. However, the Supreme Court ultimately “upheld the seizure of the ledger by holding that since the agents had made a lawful arrest, ‘[t]hey had a right without a warrant contemporaneously to search the place in order to find and seize the things used to carry on the criminal enterprise.’”⁹

Within only 5 years, the apparent blanket authority to search the place of a lawful arrest had been reined in. In *Go-Bart Importing Co. v. United States*¹⁰ and *United States v. Lefkowitz*,¹¹ searches following valid arrests, which led to the seizure of evidence, were deemed unconstitutional because, unlike the *Marron*

situation, no criminal conduct was witnessed by the arresting agents at the time of the arrests, nor did the agents have a search warrant for the premises they searched. Bluntly stated, the Court in *Lefkowitz* concluded that “[a]n arrest may not be used as a pretext to search for evidence.”¹²

The limitations imposed by *Go-Bart* and *Lefkowitz* were relatively short-lived as well. In 1947, the Supreme Court ruled that the search undertaken in *Harris v. United States*¹³ was not unconstitutional, sustaining it as “incident to arrest.”¹⁴ The search at issue followed the arrest of George Harris, which was based on an arrest warrant for his alleged involvement with cashing and interstate transportation of a forged check. He was arrested in the living room of his four-room apartment. Following the arrest, officers

undertook a thorough search of the entire apartment. Inside a desk drawer, officers found a sealed envelope with the notation “George Harris, personal papers” on it. Altered Selective Service System documents found inside the envelope were used to convict Harris of violating the Selective Training and Service Act of 1940.¹⁵

The pendulum swung again quickly, this time reining in the warrantless search incident to arrest. In *Trupiano v. United States*,¹⁶ agents raided the site of an illicit distillery, arrested several individuals, and “seized the illicit distillery.” Searches of an evidentiary nature were conducted following the arrests. No arrest or search warrants were obtained prior to the raid, arrests, and subsequent searches. After their enforcement operation, the agents involved admitted that there had been adequate opportunity to obtain such warrants beforehand.¹⁷ While finding that the warrantless arrests did not violate the Fourth Amendment, the Supreme Court held otherwise relative to the searches. Finding them a violation of the Fourth Amendment, the Court reasoned that “[i]t is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable. This rule rests upon the desirability

of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities.”¹⁸ Addressing precisely these searches incident to arrest, the Court went on to state that “the presence or absence of an arrestee at the exact time and place of a foreseeable and anticipated seizure does not determine the validity

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Law enforcement officers must... be familiar with the current state of the law regarding searches incident to arrest.
”

of that seizure if it occurs without a warrant. Rather the test is the apparent need for summary seizure, a test which clearly is not satisfied by the facts before us.”¹⁹ Finally, and forcefully, the Court held that “[a] search or seizure without a warrant as an incident to a lawful arrest has always been considered to be a strictly limited right. It grows out of the inherent necessities of the situation at the time of the arrest. But there must be

something more in the way of necessity than merely a lawful arrest. The mere fact that there is a valid arrest does not ipso facto legalize a search or seizure without a warrant.”²⁰

This forceful pronouncement of the preference for a search warrant was quickly discounted. In 1950, only 2 years after *Trupiano*, the Court decided *United States v. Rabinowitz*²¹ and reverted back to the rule laid out in *Harris*. *Rabinowitz* was again an arrest-warrant-only situation. Following the arrest of Rabinowitz at his one-room business office, federal authorities searched the desk, safe, and file cabinets in the office for approximately 90 minutes. The 573 stamps seized during the search were admitted into the trial against Rabinowitz for the possession and sale of postage stamps bearing forged overprints.²² The *Rabinowitz* Court ruled that the search fell within the principle giving law enforcement authorities “[t]he right ‘to search the place where the arrest is made in order to find and seize things connected with the crime as its fruits or as the means by which it was committed.’”²³

Finally, beginning in 1969, there has been consistency in the law governing the search of the premises where a lawful arrest has been made. *Chimel v. California*²⁴ continues to stand

for the proposition that following a lawful arrest of an individual, it is lawful to search the arrestee's person and the area within the arrestee's immediate control—that is, “the area from within which he might have obtained either a weapon or something that could have been used as evidence against him.”²⁵ These reasons for allowing the limited search have sometimes been referred to as the “twin rationales of *Chimel*.”²⁶ Ever since *Chimel*, these twin rationales (safety and evidence preservation) have not allowed police to search the entire “place where the arrest is made” as had been set forth in *Rabinowitz*,²⁷ but, rather, only the area within the arrestee's immediate control. The Supreme Court had not yet analyzed how the area within the arrestee's immediate control would be determined when the individual arrested had been in a vehicle. That issue was presumably resolved 12 years after *Chimel*.

***Belton* and *Thornton*:
The Search Incident to Arrest
As Applied to Vehicles**

When the Supreme Court rendered its opinion in *New York v. Belton*,²⁸ it appeared to offer a relatively simple principle to apply to an otherwise potentially problematic and recurring situation faced by law enforcement officers searching a motor vehicle

incident to arrest. However, *Arizona v. Gant* now explains that *Belton* did not clarify when the search of the interior of a vehicle may occur following an arrest, but only provided the permissible scope of the search if one is authorized. A recitation of the facts that gave rise to *Belton* is necessary to both frame the decision that came out of *Belton* and distinguish that case from the recently decided *Arizona v. Gant* case.²⁹

On April 9, 1978, a New York State trooper was passed by another car traveling at an excessive rate of speed on the New York Thruway. The trooper overtook the speeding car and pulled it over to the side of the road. There were four men in the car, one of whom was Roger Belton. The trooper

determined that none of the four men owned the car or were related to its owner. The trooper smelled burnt marijuana in the car and saw on the floor of the car an envelope he associated with marijuana. He, therefore, directed the men to get out of the vehicle and placed them under arrest for the unlawful possession of marijuana. He patted each down and had the four stand in separate areas so they would not be in physical touching distance of each other. The trooper searched each of the arrestees and then searched the passenger compartment of the car. Finding a black leather jacket belonging to Belton on the back seat, he unzipped one of the pockets of the jacket and discovered cocaine. He then placed the jacket in his vehicle



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and drove the four to a nearby police station. Belton was indicted for criminal possession of a controlled substance, and he moved to suppress the cocaine as the fruit of an illegal search.³⁰ The New York Court of Appeals agreed with Belton, holding that “[a] warrantless search of the zippered pockets of an inaccessible jacket may not be upheld as a search incident to a lawful arrest where there is no longer any danger that the arrestee or a confederate might gain access to the article.”³¹ The U.S. Supreme Court reversed and provided its bright-line guidance on the issue.

Writing for the Court, Justice Potter Stewart began by pointing out that while the *Chimel* principle “that limits a search incident to a lawful custodial arrest may be stated clearly enough, courts have discovered the principle difficult to apply in specific cases.”³² Specifically, Stewart noted that “[w]hile the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of ‘the area within the immediate control of the arrestee’ when that area arguably includes the interior of an automobile and the arrestee is its recent occupant.”³³ Recognizing

that “[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront,”³⁴ the Court provided a seemingly clear pronouncement: “[a]ccordingly, we hold that when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search

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**...the search incident
to lawful arrest
exception to the
Fourth Amendment
warrant requirement...
has been debated
in court opinions
and law enforcement
circles.**
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the passenger compartment of that automobile. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment, for if the passenger compartment is within reach of the arrestee, so also will containers in it be

within his reach.”³⁵ Although this pronouncement from the Court seemed straightforward, it left many questions unanswered.

In his dissenting opinion in the case, Justice William Brennan posed many of those questions.

Would a warrantless search incident to arrest be valid if conducted five minutes after the suspect left his car? Thirty minutes? Three hours? Does it matter whether the suspect is standing in close proximity to the car when the search is conducted? Does it matter whether police formed probable cause to arrest before or after the suspect left his car? And why is the rule announced today necessarily limited to searches of cars? What if a suspect is seen walking out of a house where the police, peering in from outside, had formed probable cause to believe a crime was being committed? Could the police then arrest the suspect and enter the house to conduct a search incident to arrest?³⁶

His questions pointed out his primary concern with the Court’s ruling—that it “for the first time grants police officers authority to conduct a warrantless ‘area’ search under

circumstances where there is no chance that the arrestee ‘might gain possession of a weapon or destructible evidence.’”³⁷ He hypothesized that the result in the present case would be the same even if the trooper “had handcuffed Belton and his companions in the patrol car before placing them under arrest, and even if his search had extended to locked luggage or other inaccessible containers located in the back seat of the car.”³⁸ Clearly, the majority’s bright-line approach posed potential problems and confusion for law enforcement and judges.

Some of these same concerns were discussed, but not decided, when the Supreme Court returned to this area of the law in *Thornton v. United States*.³⁹ While *Thornton* can be viewed as a mere extension of the *Belton* bright-line rule—to allow the same passenger compartment search incident to the arrest of a recent occupant of a vehicle, as well as following the arrest of its driver or passenger—its real import may be for its framing of important issues for the Court to decide later. For example, in a footnote in the majority opinion, Chief Justice William Rehnquist pointed out that “[p]etitioner [Thornton] argues that ‘we should limit the scope of *Belton* to recent occupant[s] who are within reaching distance of the car.’”⁴⁰

Instead, the Court extended the *Belton* search to the arrest of any recent occupant regardless of whether he was in reaching distance of the vehicle. The Court declined to address the proximity issue because it was “outside the question on which we granted certiorari.”⁴¹ And, in a footnote concluding his opinion, not joined by a majority of the Court,⁴² Chief Justice Rehnquist explained that the



Court would not address whether “*Belton* should be limited to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,”⁴³ an argument Justice Scalia supported in his concurring opinion in the case. Rehnquist’s reason for not addressing that question was that it had not been argued in the case and, therefore, was not before the Court.

Justice Scalia penned an opinion concurring in the result in *Thornton*, but because he did not subscribe to the bright-line nature of the searches allowed by *Belton*, he did not join the majority. Rather, Scalia reasoned that because it was reasonable for the arresting officer in this case to believe that further evidence of the crime for which the arrest was made would be in the vehicle from which the arrestee had just alighted, the search was justified. In so doing, Scalia made clear that he would “limit *Belton* searches to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.”⁴⁴

These issues and the growing disagreement surrounding them would have to be addressed, and finally decided, in a subsequent case. That case would prove to be *Arizona v. Gant*.

***Arizona v. Gant:* The Bright-line Becomes Less Clear**

The notion that the *Belton* case provided a bright-line rule as to when vehicle compartments could be searched incident to arrest has now been eliminated by the *Gant* decision. Because the Court’s decision is factually driven, the facts leading up to the decision warrant close scrutiny.



On August 25, 1999, acting on an anonymous tip that the residence at 2524 North Walnut Avenue was being used to sell drugs, Tucson police officers Griffith and Reed knocked on the front door and asked to speak to the owner. Gant answered the door and, after identifying himself, stated that he expected the owner to return later. The officers left the residence and conducted a records check, which revealed that Gant's driver's license had been suspended and there was an outstanding warrant for his arrest for driving with a suspended license.

When the officers returned to the house that evening, they found a man near the back of the house and a woman in a car parked in front of it. After a third

officer arrived, they arrested the man for providing a false name and the woman for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars when Gant arrived. The officers recognized his car as it entered the driveway, and Officer Griffith confirmed that Gant was the driver by shining a flashlight into the car as it drove by him. Gant parked at the end of the driveway, got out of his car, and shut the door. Griffith, who was about 30 feet away, called to Gant, and they approached each other, meeting 10-to-12 feet from Gant's car. Griffith immediately arrested Gant and handcuffed him.

Because the other arrestees were secured in the only patrol cars at the scene,

Griffith called for backup. When two more officers arrived, they locked Gant in the backseat of their vehicle. After Gant had been handcuffed and placed in the back of a patrol car, two officers searched his car: One of them found a gun, and the other discovered a bag of cocaine in the pocket of a jacket on the backseat.

Gant was charged with two offenses—possession of a narcotic drug for sale and possession of drug paraphernalia (i.e., the plastic bag in which the cocaine was found). He moved to suppress the evidence seized from his car on the ground that the warrantless search violated the Fourth Amendment. Among other things, Gant argued that *Belton* did not authorize the search of his vehicle because he posed no threat to the officers after he was handcuffed in the patrol car and because he was arrested for a traffic offense for which no evidence could be found in the vehicle. When asked at the suppression hearing why the search was conducted, Officer Griffith responded: “Because the law says we can do it.”⁴⁵

While that statement made by Officer Griffith appeared accurate at the time it was made, the same comment could not

be made anymore. In an unusually aligned 5-4 decision⁴⁶ from the Supreme Court, the Court in *Gant* held that “[p]olice may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.”⁴⁷ Based on the facts of this particular case (*Gant* was handcuffed, in the back of a patrol car, and surrounded by multiple officers after being arrested for driving with a suspended license), the Court found the search of *Gant*’s vehicle to be unreasonable. The Court’s holding in *Gant* relied primarily on the twin rationales (safety and evidence preservation) from the *Chimel* case in reaching its conclusion.

While the ruling appears simple enough to apply, the Court’s own language throughout the case likely will create confusion and uncertainty for law enforcement officers.⁴⁸ In an earlier part of the majority opinion, Justice Stevens wrote “[a]ccordingly, we hold that *Belton* does not authorize

a vehicle search incident to a recent occupant’s arrest after the arrestee has been secured *and cannot access the interior of the vehicle.*”⁴⁹ That standard seems to require more than the arrestee merely being “within reaching distance of the passenger compartment at the time of the search.”⁵⁰ Of course, no one should suggest leaving an arrestee unsecured or even within reaching distance of a vehicle so a warrantless search of the

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The Court’s holding in Gant relied primarily on the twin rationales (safety and evidence preservation) from the Chimel case in reaching its conclusion.

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vehicle’s passenger compartment may be conducted. The Supreme Court even pointed out in a footnote that “[b]ecause officers have many means of ensuring the safe arrest of vehicle occupants, it will be the rare case in which an officer is unable to fully effectuate an arrest so that a real possibility of access to the arrestee’s vehicle remains.”⁵¹

The second justification outlined in *Gant* for conducting a warrantless search of a vehicle’s interior compartment contemporaneous with the arrest of one of its occupants is to preserve evidence of the offense of the arrest. This clearly does not allow for searches in every vehicle arrest situation. As was the case in *Gant*, sometimes it is not reasonable to believe any evidence of the offense of the arrest will be within the vehicle.⁵² If this second of the twin rationales is to be relied on then, what exactly is required? Ever since 1925, when an officer has probable cause to believe evidence of a crime is in a motor vehicle, then the motor vehicle exception to the warrant requirement would allow a warrantless search wherever that evidence may be.⁵³ Unclear in *Gant* is whether the Court is referring to a standard different from probable cause when it is willing to allow a search of the passenger compartment if it is “reasonable to believe the vehicle contains evidence of the offense of arrest.”⁵⁴ Otherwise, this second rationale for the search in *Gant* would be unnecessary in light of the vehicle exception to the warrant requirement.

While *Gant* appears to overturn the *Belton* decision, the Court explains that it does

not. Rather, Justice Stevens claims that because the vehicle search incident to arrest has always been justified by the *Chimel* twin rationales, *Belton* only provided the *scope* of the authorized search if, in fact, a search was warranted at all.⁵⁵ Justice Stevens does acknowledge that this is different from the widely accepted belief that the *Belton* opinion did “allow a vehicle search incident to the arrest of a recent occupant even if there [was] no possibility the arrestee could gain access to the vehicle at the time of the search,”⁵⁶ attributing the confusion to Justice Brennan’s dissent in *Belton*. In fact, Stevens points out that it was a “chorus that ha[d] called for us to revisit *Belton* includ[ing] courts, scholars, and Members of this Court who have questioned that decision’s clarity and its fidelity to Fourth Amendment principles”⁵⁷ that convinced the Court to grant certiorari to the *Gant* case. As pointed out by Justice Alito in his dissenting opinion, in which he argued that the bright-line rule of *Belton* should remain intact,⁵⁸ the Court may not have provided as much clarity to this issue as it hoped.

Conclusion

While the Court has now provided clarification to law enforcement on when vehicle

searches are allowed incident to arrest, it did not address an intriguing possibility. Because vehicle searches following arrests are based on *Chimel* principles and because the twin rationales of *Chimel* do not allow the search of vehicles incident to every vehicle arrest, should nonvehicle arrests allow for the search of the area within an arrestee’s immediate control



in every situation? If not, should the accessibility to a weapon or evidence be considered in light of the restraints placed on the arrestee? Although he does not think these factors should be considered⁵⁹ (and that *Belton* should remain a bright-line rule), Justice Alito’s dissent argues that “if we are going to reexamine *Belton*, we should also reexamine the reasoning in *Chimel* on which *Belton*

rests.”⁶⁰ This seemingly logical argument will undoubtedly be made by lawyers in future cases. For now, what *Gant* makes clear is that in spite of numerous lower court decisions and a long-held perception within law enforcement to the contrary, the ability to search a vehicle incident to the arrest of a recent occupant is not a “police entitlement...but rather...an exception justified by the twin rationales of *Chimel*.”⁶¹ Law enforcement officers must be aware of this misconception that has lasted for 28 years and be familiar with the current state of the law regarding searches incident to arrest. ♦

Endnotes

¹ *Weeks v. United States*, 232 U.S. 383 (1914).

² *Id.* at 392 (emphasis added).

³ U.S. CONST. Amend. IV provides that “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.” The Supreme Court has concluded that this language dictates that searches conducted without a warrant are per se unreasonable, subject to limited and delineated exceptions. These exceptions include consent searches (*Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)), emergency searches (*Schmerber v. California*, 384 U.S. 757 (1966)), motor vehicle searches (*Carroll v. United States*, 267 U.S. 132 (1925)), inventory searches (*South Dakota v. Opperman*, 428 U.S. 364 (1976)), and

searches incident to arrest (*United States v. Robinson*, 414 U.S. 218 (1973)).

⁴ *Arizona v. Gant*, 556 U.S. ____ (2009).

⁵ Robert Barnes, “Supreme Court Limits Warrantless Car Searches,” *Washington Post*, April 22, 2009, p. A3.

⁶ *Supra* note 4.

⁷ 275 U.S. 192 (1927).

⁸ *Id.* at 194.

⁹ *Chimel v. California*, 395 U.S. 752, 756 (1969) (quoting *Marron*, *supra* note 7, at 199).

¹⁰ 282 U.S. 344 (1931).

¹¹ 285 U.S. 452 (1932).

¹² *Id.* at 467.

¹³ 331 U.S. 145 (1947).

¹⁴ *Id.* at 151.

¹⁵ *Id.* at 148-149.

¹⁶ 334 U.S. 699 (1948).

¹⁷ *Id.* at 701-703.

¹⁸ *Id.* at 705 (citations omitted).

¹⁹ *Id.* at 708.

²⁰ *Id.* (citing *Carroll v. United States*, 267 U.S. 132, 158 (1925)).

²¹ 339 U.S. 56 (1950).

²² *Id.* at 57-59.

²³ *Id.* at 61 (quoting *Weeks v. United States*, 232 U.S. 383, 392 (1914)).

²⁴ 395 U.S. 752 (1969).

²⁵ *Id.* at 768.

²⁶ *Thornton v. United States*, 541 U.S. 615, 624 (2004) (O’Connor, J., concurring in part).

²⁷ *Supra* note 21.

²⁸ 453 U.S. 454 (1981), *rehearing denied*, 453 U.S. 950 (1981).

²⁹ *Supra* note 4.

³⁰ *Supra* note 28, at 455-456.

³¹ *People v. Belton*, 50 N.Y.2d 447, 449 (Ct. App. 1980), *rev’d*, 453 U.S. 454 (1981).

³² *New York v. Belton*, 453 U.S. at 458.

³³ *Id.* at 460.

³⁴ *Id.* at 458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-214 (1979)).

³⁵ 453 U.S. at 460 (footnotes omitted).

³⁶ 453 U.S. at 470 (Brennan, J., dissenting).

³⁷ 453 U.S. at 468 (Brennan, J., dissenting) (quoting *Chimel v. California*, 395 U.S. at 763 (1969)).

³⁸ 453 U.S. at 468 (Brennan, J., dissenting).

³⁹ 541 U.S. 615 (2004).

⁴⁰ *Id.* at 622, fn. 2.

⁴¹ *Id.*

⁴² Justice O’Connor joined with Chief Justice Rehnquist and Justices Kennedy, Breyer, and Thomas in all of the majority opinion except for fn. 4.

⁴³ *Supra* note 39, at 624, fn. 4.

⁴⁴ 541 U.S. at 632 (Scalia, J., concurring) (emphasis added).

⁴⁵ *Arizona v. Gant*, 556 U.S. ____ at ____ (2009), No. 07-542, slip op. at 2-3.

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While recognizing the right to conduct postarrest warrantless searches as far back as 1914, the Supreme Court’s treatment of this search authority has varied over time.

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⁴⁶ Justice Stevens delivered the opinion of the Court, joined by Justices Scalia, Souter, Thomas, and Ginsburg. Justice Scalia filed his own concurring opinion; while Justice Breyer filed a dissenting opinion. Justice Alito filed a dissenting opinion, which was joined by Chief Justice Roberts and Justice Kennedy and by Justice Breyer, except as to Part II-E.

⁴⁷ *Supra* note 45, at ____, No. 07-542, slip op. at 18.

⁴⁸ In his dissenting opinion in *Gant*, Justice Alito points out that “the second part of the new rule...is virtually certain to confuse law enforcement officers and judges for some time to come.” No. 07-542, slip op. at 2 (Alito, J., dissenting).

⁴⁹ *Id.* at ____ (emphasis added), No. 07-542, slip op. at 1-2.

⁵⁰ *Supra* note 47, at ____ (emphasis added), No. 07-542, slip op. at 18.

⁵¹ *Supra* note 45, at ____, No. 07-542, slip op. at 10, fn. 4.

⁵² See, e.g., *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), where a custodial arrest of a driver for failure to wear seatbelt, failure to seatbelt children, driving without a license, and failure to provide proof of insurance was deemed a reasonable arrest.

⁵³ *Carroll v. United States*, 267 U.S. 132 (1925).

⁵⁴ *Supra* note 47, at ____, No. 07-542, slip op. at 18.

⁵⁵ *Supra* note 45, at ____, No. 07-542, slip op. at 9.

⁵⁶ *Id.* at ____, No. 07-542, slip op. at 8.

⁵⁷ *Id.* at ____, No. 07-542, slip op. at 4.

⁵⁸ *Supra* note 45, at ____ (Alito, J., dissenting).

⁵⁹ In his dissenting opinion, Justice Alito points out that “[h]andcuffs were in use in 1969. The ability of arresting officers to secure arrestees before conducting a search—and their incentive to do so—are facts that can hardly have escaped the Court’s attention” in *Chimel*, and that the *Chimel* Court intended that its new rule apply in cases in which the arrestee is handcuffed before the search is conducted. No. 07-542, slip op. at 9 (Alito, J., dissenting).

⁶⁰ *Supra* note 45, at ____, No. 07-542, slip op. at 10 (Alito, J., dissenting).

⁶¹ *Id.* at ____, No. 07-542, slip op. at 9 (quoting *Thornton v. United States*, 541 U.S. 615, 624 (2004) (O’Connor, J., concurring in part)).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Message to Our Readers

We need your e-mail addresses.

The *FBI Law Enforcement Bulletin* has been available to our readers online since March 1990. We are excited to inform you of our plans to make our magazine more accessible as an online magazine. With the upcoming August 2009 issue, we will begin sending our readers e-mails announcing the latest edition and providing a direct link to the *FBI Law Enforcement Bulletin* on <http://www.fbi.gov>. There, you will be able to find the current edition, as well as previous editions of the *FBI Law Enforcement Bulletin* going back 10 years.

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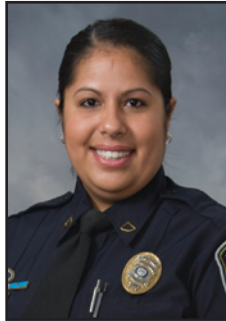
Editor
FBI Law Enforcement Bulletin

The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Haas



Officer Martinez

Officers David Haas and Christina Martinez of the Cordele, Georgia, Police Department responded to a call involving a woman armed with a knife and threatening to harm herself. The officers tried to initiate dialogue with her but were unsuccessful. At this time, she laid on nearby tracks in the path of an oncoming train. Immediately, Officer Haas pulled her to safety, just before its arrival. Thanks to the compassionate and brave response of Officers Haas and Martinez, the woman remained unharmed and received the treatment she needed.



Sergeant Garrett



Officer Marshall

In an attempt to end her life, a woman jumped 97 feet from a bridge into a muddy river and began to float downstream with the swift current. A citizen who witnessed the incident drove down to the water's edge, entered, and began to swim to her. Sergeant Josh Garrett and Officer Ben Marshall of the Jackson, Alabama, Police Department responded to the call and also drove to the shore. They then ran approximately one-quarter of a mile in ankle-deep mud, negotiating dangerous obstacles and ignoring the possibility of encountering snakes and alligators, to catch up with the

two people in the river. At this point, not only did the woman need to be rescued but the citizen was exhausted from swimming against the current. Disregarding their own safety, Sergeant Garrett and Officer Marshall entered the swift water, took rescue lines to the woman and her would-be rescuer, and pulled them both to safety.

Wanted: Bulletin Notes

The *FBI Law Enforcement Bulletin* seeks nominations for the **Bulletin Notes**. Nominations should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Hall of Honor, Quantico, VA 22135.

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Patch Call



Under the Connecticut and U.S. flags, the West Hartford Police Department's patch features a depiction of the birthplace of Noah Webster, who compiled the first dictionary that distinguished American and British usage. He also played a pivotal role in standardizing American spelling with his book known as the Blue-Backed Speller.



In addition to a picture of the city's namesake, the patch of the White Oak, Texas, Police Department features a depiction of a towering oil derrick, representing the mainstay industry of east Texas. The state outline with the star designates the community's location, and the maroon background is the color of the local school district.